

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 468/CTK/2014**  
Assessment Year : 2008-09

|  |     |  |
|--|-----|--|
| Income Tax Officer, Ward-3(2), Bhubaneswar | Vs. | Gaya Santara, Plot No.63/A, Sector-A, Zone-D, Mancheswar Industrial Estate, Bhubaneswar. |
| PAN/GIR No.ADQPS 3243 J                    |     |  |
| <b>(Appellant)</b>                         | ..  | <b>( Respondent)</b>   |

**ITA No. 483/CTK/2014**  
Assessment Year : 2008-09

|   |     |  |
|---|-----|--|
| Gaya Santara, Plot No.63/A, Sector-A, Zone-D, Mancheswar Industrial Estate, Bhubaneswar | Vs. | Income Tax Officer, Ward-3(2), Bhubaneswar |
| PAN/GIR No.ADQPS 3243 J   |     |  |
| <b>(Appellant)</b>  | ..  | <b>( Respondent)</b>                       |

Assessee by : Shri S.K.Agarwalla, AR  
Revenue by : Shri Subhendu Dutta, DR

**Date of Hearing : 26/07/ 2017**  
**Date of Pronouncement : 28 /07/ 2017**

**ORDER**

**Per N.S.Saini, AM**

These are cross appeals filed by the Revenue and the assessee against the order of CIT(A)-I, Bhubaneswar, dated 23.9.2014, for the assessment year 2008-09.

2. Ground No.1 in Revenue's appeal reads as under:

"1. On the facts and in the circumstances of the case, the CIT(A) is not justified in allowing exemption u/s.54F of the Act to the assessee without considering that the assessee did not fulfil all the conditions for claiming such exemption.

3. Ground No.1 in assessee's appeal reads as under:

"1. That, the Ld. Authorities below are wrong in interpreting the provisions of section 54F of the Act and wrong in holding the meaning assigning to word "a house" as "one house" and therefore the disallowance of exemption of capital gain u/s 54F is liable to be deleted.

4. Ground No.1 of the appeal of the Revenue's appeal and Ground No.1 of the assessee's appeal are interconnected, therefore, they are being disposed of together for the sake of convenience.

5. The brief facts of the case are that the Assessing Officer observed that the assessee had purchased Plot No.88/1189, at Pokhariput, Bhubaneswar during April, 1988 and done some improvement on the plot for construction of his own house. The Assessing Officer also observed that the assessee executed an agreement dated 4.1.2008 with builder, M/s. S.B. Realcon (P) Ltd., Bhubaneswar for construction of flats on the plot and in exchange of the land, the assessee will get 28% of the built-up area. Accordingly, the builder M/s. S.B.Realcon (P) Ltd., Bhubaneswar constructed the building in the land and delivered 4 flats bearing Nos.101, 103, 104 & 304 to the assessee towards his share of 28% of the constructed area. The assessee filed return u/s.148 of the Act, showing long term capital gains amounting to Rs.60,18,026/- as exempt u/s.54F of the Act.

According to the Assessing Officer, out of four flats delivered to the assessee by the builder, the Flat No.103 was rented out, Flat No.s101 & 104 were occupied by the assessee and Flat No.304 was vacant at the relevant time. The Assessing Officer observed that the assessee has acquired/purchased 4 independent residential flats within a period of two years from the date of transfer of original capital assets for which the assessee is not entitled to claim exemption u/s.54F of the Act. Accordingly, he denied the claim of exemption u/s.54F of the Act to the assessee in respect of all flats acquired by the assessee in exchange of land

6. On appeal, the CIT(A) observed that in view of the decision of ITAT Mumbai Special Bench in the case of ITO vs. Sushila M Jhaveri, 107 ITD 327(Mum)(SB), the assessee is entitled to one residential unit as per preference and, accordingly, directed the Assessing Officer to allow exemption u/s.54F of the Act in respect of one Flat bearing No.101 for which assessee has given preference.

7. Before us, Id A.R. of the assessee relied on the decision of Hon'ble Karnataka High Court in the case of CIT vs. Smt. K.G.Rukminiamma, 331 ITR 211 (Kar), wherein, it was held that expression "a residential house" used in Section 54 should be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number, assessee was entitled to claim exemption under section 54 in respect of four residential flats acquired by her.

8. Further, he relied on the decision of Hon'ble Madras High Court in the case of CIT vs. V.R.Karpagam, 373 ITR 127(Mad), wherein, it was held prior to amendment of section 54F by Finance No.(2) Act, 2014 w.e.f. 1.4.2015, with regard to word "a" a residential house would include multiple flats/residential units, thus where under the development agreement assessee was entitled to receive certain built-up area, which got translated into five flats, exemption u/s.54F in respect of all five flats in a multi-storey construction would be available.

9. He further relied on the decision of Hon'ble A.P. High Court in the case of CIT vs. Sayed Ali Adil, 352 ITR418(AP), wherein, it was held that deduction under section 54 of the Act is allowable with respect to residential house consisting of several independent units also..

10. On the other hand, Id D.R. relied on the order of the Assessing Officer.

11. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee entered into an agreement with M/s. S.B.Realcon Pvt Ltd., Bhubaneswar for construction and sale of flats on his land situated at Plot No.88/1189, Pokhariput, Old Town, Bhubaneswar during the financial year 2007-08. Thus, there was a deemed transfer of land within the meaning of section 2(47) of the I.T.Act, read with section 53A of the Transfer of Property Act during the financial year 2007-08 relevant to assessment year 2008-09. The assessee declared full value of consideration of capital asset

of Rs.70,89,600/- and deducted therefrom indexed cost of acquisition of capital asset of Rs.2,73,003/-, Rs.6,78,571/- towards indexed cost of improvement and Rs.1,20,000/- towards expenses on transfer of capital asset. Accordingly, the net long term capital gain was arrived at Rs.60,18,026/-, which was fully claimed as exempt under section 54F of the Act. From the letter dated 21.4.2012 of the builder, it is noted by the Assessing Officer that the builder had handed over four flats bearing No.101,103104 and 304 to the assessee towards his share consisting of 1,826 sq.ft, 1149 sq.ft, 1455 sq.ft, and 1455 sq.ft super built up area (1306 sq.ft, 885 sq.ft. 1120 sq.ft and 1120 sq.ft) plinth area respectively. The Assessing Officer observed that the assessee has calculated the cost of four flats by applying Rs.1600/- per sq.ft and arrived at the cost of the assessee's share as under:

| Flat No. | Type | Plinth area(sq.ft) | Super built up area(sq.ft) | Cost of the flat(Rs.) |
|----------|------|--------------------|----------------------------|-----------------------|
| 103      | 2BR  | 885                | 1149                       | 25,65,000/-           |
| 101      | 3BR  | 1306               | 1826                       | 36,00,000/-           |
| 104      | 3BR  | 1120               | 1455                       | 32,00,000/-           |
| 304      | 3BR  | 1120               | 1455                       | 32,00,000/-           |
|          |      |                    |                            | 1,25,65,000/-         |

12. The Assessing Officer further observed that the assessee was allotted four flats as his share which is not one residential unit but four different independent units. According to the provisions of section 54F of the Act, the assessee is not entitled to exemption u/s.54F of the Act because he has acquired/purchased four independent residential units within a period of

two years from the date of transfer of the original capital asset and therefore, he concluded that the assessee is owner of more than one residential flat and hence, the claim of exemption u/s.54F of the Act is not allowed.

13. On appeal, the CIT(A) held that the assessee was entitled to exemption u/s.54F of the Act for one residential unit as per his preference. The assessee has asked for exemption of capital gains in respect of flat No.101 u/s.54F of the Act. Therefore, he directed the Assessing Officer to allow exemption u/s.54F of the Act in respect of one flat No.101.

14. We find that the assessment year under appeal is Assessment year 2008-09. According to the decision of Hon'ble Karnataka High Court in the case of Smt. K.G.Rukminiamm (supra), wherein, the assessment year involved is 2004-05, the Hon'ble Court has held that the expression "a residential house" used in Section 54 should be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number. Still further, the Hon'ble Madras High Court in the case of V.R.Karpagam (supra), wherein, the assessment year involved is 2007-08 has held that prior to amendment of section 54F by Finance No.(2) Act, 2014 w.e.f. 1.4.2015, with regard to word "a" a residential house would include multiple flats/residential units, thus where under the development agreement assessee was entitled to receive certain built-up area, which got translated into five flats, exemption u/s.54F in respect of all five flats in a multi-storey construction would be available. To

the same effect is the decision of Honble A.P. High Court in the case of CIT vs. Sayed Ali Adil,(supra).

15. Respectfully following the above quoted decisions of various Hon'ble High Courts, we hold that the assessee is entitled to deduction in respect of all four flats received by him from the builder under a development agreement entered into by the assessee with the builder. Therefore, we set aside the orders of lower authorities and allow the ground of appeal of the assessee and reject the ground of appeal of the revenue.

16. Ground No.2 of revenue's appeal reads as under:

2. On the facts and in the circumstances of the case, the CIT(A) is not justified in reducing the market price of flats by 25% of the same determined by the AO for the purpose of calculating the long term capital gain."

17. Ground No.2 of assessee's appeal reads as under:

2. That, the Ld. Income Tax Officer legally not correct in not allowing the exemption of capital gain of' 1,19,00,411 u/s 54F and the Ld. Commissioner of Income Tax (Appeals-I), Bhubaneswar has committed an error of law in restricting the disallowance of exemption to the extent of' of" 60,59,161 and therefore the total long term capital gain are liable to be allowed as exemption u/s 54F of the Act."

18. Ground No.2 of the revenue's appeal and Ground No.2 of the assessee's appeal is interconnected and, therefore, they are being disposed of together as under:

19. In view of our decision in Ground No.1 of the Assessee's appeal and Ground No.1 of Revenue's appeal , this ground of appeal of the assessee

and revenue has become only academic in nature, hence, infructuous and dismissed.

20. In the result, appeal filed by the revenue is dismissed and the appeal filed by the assessee is partly allowed.

Order pronounced on 28 /07/2017 .

Sd/-

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 28 /07/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : /Revenue: Income Tax Officer,  
Ward-3(2), Bhubaneswar
2. The Respondent/Assessee: Gaya Santara, Plot  
No.63/A, Sector-A, Zone-D, Mancheswar  
Industrial Estate, Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**